

EXHIBIT Q

EXHIBIT 19

FILED UNDER SEAL

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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

In Re:)
)
) No. 2:21-cv-00563-JCC
VALVE ANTITRUST LITIGATION)
)

VIDEO-RECORDED DEPOSITION UPON ORAL EXAMINATION OF
KASSIDY GERBER

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9:05 A.M.

THURSDAY, OCTOBER 5, 2023
701 FIFTH AVENUE, SUITE 5100
SEATTLE, WASHINGTON

Reported by: Tami Lynn Vondran, CRR, RMR, CCR/CSR
WA CCR #2157; OR CSR #20-0477; CA CSR #14435

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1 have you had any kind of training on any topic that you
2 understood to relate to antitrust?

3 MR. SKOK: And, again, Ms. Gerber, to the
4 extent you can answer this without disclosing
5 attorney-client communications, you may. But to the
6 extent that he's asking you about the content of
7 communications you've had with lawyers, that's
8 attorney-client privilege, so please don't disclose
9 that.

10 THE WITNESS: Okay.

11 Q. (BY MR. O'ROURKE) So it's a yes-or-no
12 question. Either you've had the training or you have
13 not.

14 MR. SKOK: Well, to the extent that she's had
15 those communications with lawyers, you're asking about
16 the substance of those attorney-client communications.

17 That's the type of communication that I'm
18 instructing you not to answer.

19 THE WITNESS: Okay.

20 Q. (BY MR. O'ROURKE) Your answer?

21 A. I'm not going to answer.

22 Q. You're refusing to answer?

23 A. Yes.

24 MR. SKOK: Well, she's been instructed not to
25 answer. I think she's following counsel's instructions.

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1 MR. O'ROURKE: So just so we're very clear,
2 Mr. Skok --

3 MR. SKOK: Skok, please. Skok.

4 MR. O'ROURKE: Skok. Thank you.

5 MR. SKOK: Thank you.

6 MR. O'ROURKE: You -- the position you're
7 taking now in instructing the witness not to answer is,
8 I am not permitted to ask an employee of Valve whether
9 or not that employee has had compliance training on
10 antitrust?

11 MR. SKOK: No. The question is asking for the
12 substance of what kind of training she may have had by
13 counsel. To the extent there's a training by counsel,
14 that would disclose the substance of attorney-client
15 communications. The instruction is not to answer in a
16 way that discloses the substance of attorney-client
17 communications. I did tell the witness if she can
18 answer otherwise, then she's free to.

19 Q. (BY MR. O'ROURKE) My question is: Have
20 you -- during the time you've worked at Valve, about 11
21 and a half years, have you had training on antitrust
22 compliance?

23 MR. SKOK: And the same instructions,
24 Ms. Gerber.

25 Q. (BY MR. O'ROURKE) You need to answer.

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1 A. No. I'm not answering.

2 MR. SCHENCK: Why don't we take a break, see
3 if we can figure this out.

4 MR. SKOK: Yeah. It's probably a good time
5 for a break to consult on some of these issues --

6 MR. O'ROURKE: Take a break.

7 MR. SKOK: -- as well as we've been going
8 about an hour.

9 THE VIDEOGRAPHER: The time is 9:56 a.m. And
10 we're going off the record.

11 (Brief break taken.)

12 THE VIDEOGRAPHER: The time is 10:09 a.m. And
13 we're back on the record.

14 Q. (BY MR. O'ROURKE) Ms. Gerber, during the time
15 you've worked at Valve, did Valve have a policy to
16 require material parity for things sold on the Steam
17 store?

18 MR. SKOK: Object to the form.

19 A. I would not describe what we do as a policy,
20 but in practice, we ask that partners have material
21 parity for their games on Steam between other PC
22 versions.

23 Q. (BY MR. O'ROURKE) What does "material parity"
24 mean in this context?

25 A. It means the game you offer on Steam has to be

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1 comparable, as good as any other version -- any other PC
2 versions.

3 Q. And when you say "as good as," does that mean
4 it has to have the same DLC?

5 A. Yes.

6 Q. And the same content for the -- in other
7 words, you can't have some additional play time on the
8 version that's sold outside of Steam?

9 A. The -- having additional play time that's not
10 available on Steam, but is available on another PC
11 store, would be a -- would be a, I think, in my opinion,
12 violation of material parity, yeah.

13 Q. What about price, if the price was different
14 on the other PC store?

15 MR. SKOK: Object to the form.

16 A. It depends on why and when.

17 Q. (BY MR. O'ROURKE) What do you mean?

18 A. I mean, if a game is on sale at a different
19 time than it's on sale on Steam, like, we don't -- it's
20 not a problem. So it's -- it depends on how it's -- it
21 depends -- there's a lot of -- it's a case-by-case
22 thing. And it's not always -- like, it doesn't always
23 have to be the same price on Steam that it is elsewhere.

24 Q. When is the price of a game that's being sold
25 on another PC's online store a problem with Steam's

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1 material parity practice?

2 MR. SKOK: Object to the form.

3 A. It's a case-by-case thing. You'd have to give
4 me a more specific example. I mean...

5 Q. (BY MR. O'ROURKE) And let me back up a
6 minute.

7 You said, a little bit ago, that you would
8 characterize the material parity requirement as a
9 practice, not a policy --

10 MR. SKOK: Object to the form.

11 Q. (BY MR. O'ROURKE) -- correct?

12 A. I guess I don't really know what you mean by
13 "policy." But in general, I don't feel like we have a
14 lot of policies. That sounds kind of bureaucratic to
15 me. So I don't like the word "policy."

16 But it's like in practice we -- if we know
17 about a better version of a game or a -- something that
18 customers might want in the version of the game on Steam
19 that's not available, we would approach a partner about
20 it.

21 Q. And so in your mind, what's the difference
22 between a policy and a practice if in either case you're
23 going to the developer when you see that they are
24 offering a version of the game on another PC online
25 store that does not meet material parity?

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1 A. A policy sounds more official, like you
2 have -- I don't know, it just sounds more official. But
3 I guess I'd ask you to tell me what the difference is,
4 because I don't really know.

5 Q. Well, isn't it the case that you have told a
6 developer that "Steam's policy has always been to
7 require material parity for things we sell on the Steam
8 Store"?

9 A. I don't know. Maybe. I don't remember. Are
10 you telling -- do you have something that says I said
11 that? I don't remember saying that.

12 Q. I do --

13 A. Okay.

14 Q. -- but we'll get to the document in a moment.
15 I'm not trying to --

16 A. Apparently I did use the word "policy," then.
17 I don't know.

18 Q. That's why I'm trying to understand your
19 distinction, if there is one, between "policy" and
20 "practice" in terms of Steam and your business
21 development colleagues enforcing this material parity
22 requirement.

23 MR. SKOK: Object to the form.

24 Q. (BY MR. O'ROURKE) What's the difference?

25 MR. SKOK: Object to the form.

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1 Q. So I'm just trying to understand the
2 distinction between the two situations, where in both
3 cases a Steam customer is buying the game and then, in
4 this situation, learning that it's for sale at a lower
5 price, why does it matter if the lower price is on Steam
6 or the lower price is on another online store?

7 A. Can you repeat the question.

8 Q. Sure.

9 What's the distinction between a Steam
10 customer who buys on Steam two days before a sale on
11 Steam, versus the Steam customer who buys on Steam and
12 then learns two days later the same game is for sale at
13 a lower price on a different store?

14 A. I don't -- I don't think there is a
15 distinction. I think that's -- I don't have an issue
16 with that.

17 Q. But yet if the game is for sale on Steam at
18 one price, and it's also being sold on a different
19 online store at a lower price, Steam does have a problem
20 with that?

21 A. Not always --

22 MR. SKOK: Object to the form.

23 Go ahead.

24 A. Not always, no.

25 Q. (BY MR. O'ROURKE) But sometimes it does?

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1 A. It's case by case, yeah.

2 Q. Is there something in the SDA that requires
3 the developer to sell a game at the same price on -- let
4 me rephrase that.

5 Is there a requirement -- where is there a
6 requirement -- where is there a requirement that a
7 developer sell a game on Steam at a price that's in
8 parity with what it's selling for that same game on a
9 different online store?

10 A. I don't know the SDA front to back, so I don't
11 know.

12 Q. But you work with SDAs all the time?

13 A. Sure.

14 Q. And you're not aware of a requirement in the
15 SDAs that Steam has that requires developers to sell
16 their games at a price in parity with what they're
17 selling on Steam?

18 MR. SKOK: Object to the form.

19 A. No.

20 Q. (BY MR. O'ROURKE) Are you aware of a
21 requirement in any other way, Steam documentation, that
22 a developer must sell its game on Steam at a price
23 that's in parity with what it sells the same game for on
24 a different online store?

25 A. No.

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1 Q. So why does Steam have a provision in the SDAs
2 that requires DLC to be on parity but doesn't require
3 the price to be on parity, yet Steam, at least at times,
4 takes action against a developer who doesn't have a
5 price parity?

6 MR. SKOK: Object to the form.

7 Also, Ms. Gerber, to the extent you've had
8 communications with counsel about this issue, those
9 would be attorney-client privileged, and instruct you
10 not to disclose those.

11 If you can answer otherwise, please do.

12 A. Can you repeat the question.

13 MR. O'ROURKE: Can we have it read back,
14 please.

15 (Last question read back.)

16 A. So I feel like there were two questions there.
17 Why does Steam have a -- sorry. Can you read it again.

18 (Last question read back.)

19 A. That's a big question. I don't know. You're
20 asking why does Steam have a parity.

21 So we have a parity clause in our SDA because
22 we don't want to have a worse version of the game, we
23 want to make sure that the thing that we're offering on
24 Steam is as good as any other PC version that's
25 available out there.

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1 So that's why we have the parity clause.

2 Q. (BY MR. O'ROURKE) Okay. And why don't you
3 have a price parity clause when, at least at times, you
4 enforce price parity against developers who are selling
5 a game at a lower price at a different store?

6 MR. SKOK: Object to the form.

7 Also, to the extent that this calls for a
8 disclosure of attorney-client communications, those
9 would be privileged. Please do not disclose those.

10 If you can answer otherwise, please do.

11 A. We don't have a price parity clause because we
12 think it's -- we understand that developers are going to
13 run promotions on other channels at different times, and
14 so we don't require that they always run them on Steam
15 when they're -- when they, you know, want to run one on
16 their own platform or on a different, you know,
17 platform's sale event, or something like that.

18 So that's why we don't require parity for
19 price.

20 Q. (BY MR. O'ROURKE) But you take down their
21 preorders if they're not in material parity on price.

22 You've done that?

23 A. Yes.

24 Q. It's not based on the SDA?

25 A. No. It's based on -- it's based on a

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1 brand-new game that we're asking customers to pay full
2 price for before the game's even available. And so, you
3 know, we think that -- we want to make sure that's a
4 good offer.

5 Q. You've worked at Steam for over 11 and a half
6 years. Can you point to anything in any Steam
7 documentation that requires developers to sell a game
8 with -- on price parity with what they're selling the
9 same game on Steam?

10 MR. SKOK: Objection. Asked and answered.

11 A. I'd have to -- I'd have to -- I don't have any
12 of our documentation memorized, so I don't know.

13 Q. (BY MR. O'ROURKE) Okay. As you sit here,
14 having worked as an account manager for at least nine
15 and -- nine-plus years, you can't think of any
16 documentation that Steam has that would obligate a
17 developer to sell its game on another platform in parity
18 in price with what it sells the game -- same game on
19 Steam; correct?

20 MR. SKOK: Objection. Asked and answered.

21 A. I'm not -- I don't have our documentation
22 memorized, so no.

23 Q. (BY MR. O'ROURKE) Is it fair to say that
24 during the time you've worked at Valve, there's a rule
25 of thumb that you ask that anything that a developer

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1 offers through other retailers are also available to
2 Steam customers?

3 A. Yeah, that's -- that's accurate.

4 Q. And has that been accurate for the entire time
5 you've been at Valve, about 11 and a half years?

6 A. Probably, yeah. I can't remember a time when
7 it wasn't that way.

8 Q. And how did you learn that that was a
9 requirement or a rule of thumb --

10 A. I don't remember.

11 Q. -- at Valve?

12 A. I don't remember.

13 Q. You learned that working in business
14 development with your coworkers?

15 A. Probably, yeah.

16 Q. And where did you learn that you need to make
17 sure customers who come to purchase games from Steam
18 aren't being offered a worse product than what's offered
19 elsewhere?

20 A. Where did I learn?

21 Q. Yes.

22 A. Can you ask again.

23 Q. Sure.

24 I'll ask it this way -- different question.

25 Is it fair to say that in your experience